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SHACKLEFORD BANKS WILD HORSES PROTECTION ACT

OCTOBER 28, 1997.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 765]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 765) to ensure maintenance of a herd of wild horses in Cape Lookout National Seashore, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Shackleford Banks Wild Horses Protection Act”.

SEC. 2. MAINTENANCE OF WILD HORSES IN CAPE LOOKOUT NATIONAL SEASHORE.

Section 5 of the Act entitled “An Act to provide for the establishment of the Cape Lookout National Seashore in the State of North Carolina, and for other purposes”, approved March 10, 1966 (Public Law 89-366; 16 U.S.C. 459g-4), is amended by inserting “(a)” after “SEC. 5.”, and by adding at the end the following new subsection:

“(b)(1) The Secretary, in accordance with this subsection, shall allow a herd of free roaming horses in Cape Lookout National Seashore (hereinafter referred to as the Seashore).

“(2) Within 180 days after enactment of this subsection, the Secretary shall enter into an agreement with the Foundation for Shackleford Horses (a non-profit corporation established under the laws of the State of North Carolina), or another qualified non-profit entity, to provide for management of free roaming horses in the seashore. The agreement shall—

“(A) provide for cost-effective management of the horses while ensuring that natural resources within the seashore are not adversely impacted; and

“(B) allow the authorized entity to adopt any of those horses that the Secretary removes from the seashore.

“(3) The Secretary shall not remove, assist in, or permit the removal of any free-roaming horses from Federal lands within the boundaries of the seashore—

“(A) unless the entity with whom the Secretary has entered into the agreement under paragraph (2), following notice and a 90-day response period, fails to meet the terms and conditions of the agreement; or

“(B) unless the number of free-roaming horses on Federal lands within Cape Lookout National Seashore exceeds 110; or

“(C) except in the case of an emergency, or to protect public health and safety.

“(4) The Secretary shall annually monitor, assess, and make available to the public findings regarding the population structure and health of the free roaming horses in the national seashore.

“(5) Nothing in this subsection shall be construed as creating liability for the United States for any damages caused by the free roaming horses to property located inside or outside the boundaries of the seashore.”.

PURPOSE OF THE MEASURE

The purpose of H.R. 765 is to ensure maintenance of a herd of wild horses in Cape Lookout National Seashore, and for other purposes.

BACKGROUND AND NEED

Cape Lookout National Seashore was authorized March 10, 1966. The National Seashore, with its headquarters at Harkers Island, North Carolina, stretches approximately 55 miles along the Outer Banks from Beaumont Inlet in the south to Ocracoke Inlet at its northernmost reach. The Seashore encompasses approximately 28,243 acres, of which 25,173 acres are Federal and the remaining 3,069 are non-Federal.

Horses have inhabited the Core Banks of North Carolina, including the area within the National Seashore for between 100 and 300 years. When the National Seashore was established in 1966, there were approximately 100 wild horses on the barrier island. There were also free-roaming cattle, sheep and goats. A Park Service study in 1978 noted 108 horses, 89 cattle, 144 sheep, and 121 goats. In 1981, a NPS-funded resource study concluded that removal of the feral cattle, sheep and goats would restore native vegetation on the island. As a result, all other livestock was removed from the National Seashore in 1986, leaving a herd of 90 to 100 wild horses. The 1982 general management plan for the Seashore provided for the maintenance of a representative free-roaming herd of horses and reflected public input gathered in the late 1970's.

In 1995, the Park Service initiated an environmental assessment to determine alternatives for managing the wild horse herd. In February 1996, the Service selected an alternative that required rounding up the horses and eliminating those from the herd that tested positive for equine infectious anemia and for the continued maintenance of 50 to 60 animals in the herd. This decision resulted in the round-up of 185 wild horses in November, 1996. Because there were no state-approved quarantine horse farms available to receive and care for the infected horses, 76 animals carrying equine anemia virus were euthanized.

Equine infectious anemia is a viral disease found in horses for which there is no vaccine or cure. The large horsefly is the primary vector for the disease. However, the virus does not live long within the horsefly carrier. For the disease to spread through insect bites, animals must be within close proximity of each other. This is why quarantine measures are successful for horses that survive the

milder forms of the disease. Clinical signs range from fever, depression, no appetite and death for seriously ill horses; to weight loss, swelling and anemia in lesser cases. Approximately one third of horses with the acute form die within one month.

During the week of March 10, 1997, a second round-up and testing program was conducted. During this round-up, 103 horses were gathered and tested. Of that number, 5 tested positive for equine anemia. The Foundation for Shackleford Horses had by this time developed a state-approved quarantine site and the horses were transferred there. The Park Service is developing a Memorandum of Understanding with the Foundation to cooperate in the management of the horses. In the meantime the two entities are cooperating under the terms of a special use permit issued to the Foundation.

The Park Service established the Shackleford Banks Horse Council in December 1996 in an effort to capture the view of the wider public. The Council was developed to organize the input of the various stakeholders in the community with an interest in the horses and to assist the Service in the development of horse management policy at the Seashore.

Wild horses have become an emotional national issue since the passage of the Free Roaming Wild Horse and Burro Act of 1971. Feral horse management within the National Park Service varies from park to park. At Assateague Island National Seashore, Maryland and at Cumberland Island National Seashore in Georgia, the Park Service actively manages wild horse herds. Currently, the management policy of the Park Service administered areas is to remove or actively manage herd size if environmental assessments conclude native vegetation is impacted.

LEGISLATIVE HISTORY

H.R. 765 was introduced by Congressman Walter B. Jones, Jr. on September 3, 1997 (NC). On July 22, 1997, H.R. 765 passed the House of Representatives by a recorded vote of 416 to 6.

The Subcommittee on National Parks, Historic Preservation and Recreation held a hearing on H.R. 765 on October 1, 1997.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on October 22, 1997, by a unanimous voice vote of a quorum present, recommends that the Senate pass H.R. 765, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of H.R. 765, the Committee adopted an amendment in the nature of a substitute, which would have the effect of ensuring the National Park Service and a non-profit cooperative horse-management entity manage the herd of free-roaming horses so as not to adversely impact park resources and would have the additional effect of removing an absolute minimum number of horses in the herd (which was 100 animals in the original language). The amendment further conforms the provisions to simi-

lar legislation reported by the Committee and passed in the 104th Congress.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the bill the “Shackleford Banks Wild Horses Protection Act”.

Section 2 amends 16 U.S.C. 459g–4 by adding “(a)” to section 5 and by adding at the end of section 5 a subsection (b) within the five following paragraphs:

Subsection (b)(1) directs that the Secretary of the Interior (Secretary) shall allow a herd of free-roaming horses within the Cape Lookout National Seashore (National Seashore).

Paragraph (b)(2) directs the Secretary to enter into an agreement with the Foundation for Shackleford Horses (Foundation) or other qualified non-profit entity within 180 days of enactment to provide cost effective cooperative management of the wild horses while ensuring natural resources within the National Seashore are not adversely impacted by the horses, and to allow the non-profit entity authorization to adopt any of the horses removed from the national seashore.

Paragraph (b)(3) directs the Secretary not to remove any horses, permit or assist in their removal from Federal lands within the national seashore unless the non-profit entity in paragraph (b)(2) after notice and a 90 day period fails to meet the terms of the agreement in paragraph (b)(2); or unless the number of free-roaming horses within the national seashore exceeds 110 animals; or except in cases of emergency or threats to public health and safety.

Paragraph (b)(4) directs the Secretary to perform annual monitoring, assessment and to make available to the public his findings regarding the population structure and health of the free-roaming herd of wild horses at the national seashore.

Paragraph (b)(5) states that nothing in this subsection shall create liability for the United States for any damages to property that might be caused by Cape Lookout National Seashore’s free-roaming horses, whether those damages to property are within or outside the boundaries of the national seashore.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time this report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 765. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 765, as ordered reported.

EXECUTIVE COMMUNICATIONS

On October 24, 1997, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on H.R. 765. These reports had not been received at the time the report on H.R. 765 was filed. When these reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony of the Department of the Interior at the Subcommittee hearing follows:

STATEMENT OF MAUREEN FINNERTY, ASSOCIATE DIRECTOR FOR PARK OPERATIONS AND EDUCATION, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, it is a pleasure to appear before this subcommittee to present the Department's views on H.R. 765. This bill is intended to ensure maintenance of a herd of not less than 100 feral horses in Cape Lookout National Seashore. The bill also would prohibit the removal of any horses unless their numbers exceeded 110 and would require the Secretary to enter into an agreement with the Foundation for Shackleford Horses, Inc. to provide for the management of the horses.

We support enactment of H.R. 765 with two suggested modifications discussed below.

The National Park Service is committed to maintaining a representative population of free-roaming horses on Shackleford Banks. We intend to have a herd that is genetically viable at a population level that will minimize adverse impacts on the natural resources of the barrier island.

In fact, there is currently a management program at Cape Lookout NS that has the same purpose as this bill—to ensure a permanent population of free-roaming horses on Shackleford Banks. The program provides for the removal and public adoption of surplus horses through the Foundation for Shackleford Horses, Inc. (Foundation) and permits a horse management partnership between the non-profit Foundation and the National Park Service.

H.R. 765 addresses a specific resource management decision that park managers make daily. Park superintendents make these decisions based on a myriad of interrelated factors, including the mission of the park; the best available scientific information; input from local, state, and national interests; the policies of the National Park Service; and other considerations too numerous to list here. Although we continue to believe that such decisions are best made at the individual park level due to their complexity, we are willing to support this legislation because it has the same broad objectives as our current management pro-

gram. We do have, however, the following suggested modifications, (1) that the requirement for keeping a specific herd level be removed, and (2) any adverse impact that the horses might have on the natural resources of the Seashore be considered.

The enabling legislation for Cape Lookout National Seashore did not foresee the issue of free-roaming feral horses on Shackleford Banks. Through public input to our General Management Plan in the late 1970s, we recognized the public concern and interest in the horses. Accordingly, in our 1982 General Management Plan, we stated that we intend to maintain a representative herd of free-roaming horses on Shackleford Banks. We have reaffirmed that commitment in responses to Congressional inquiries, letters to State and local elected officials, special interest groups, and the general public. We have also confirmed that commitment as a preferred alternative in the Environmental Assessment (EA), which was produced to specifically address the horse management issues on Shackleford Banks.

In 1996, following a series of public meetings, discussions with members from the scientific community, and other professional managers of feral horse herds, the park developed a draft EA with alternatives for managing the Shackleford Banks horse herd. Following additional public meetings, the National Park Service prepared a final EA and a horse management plan. The Service's preferred alternative called for a one-time roundup of horses on the island, removing all but 50 to 60 horses and offering the surplus horses for public adoption. Immunocontraception would then be used for future population control. That plan, while acceptable to the general public, brought very vocal opposition from certain groups who opposed any management intervention. Some of the opposition was based on the opinion that these horses were descended from stock off Spanish ships wrecked along the coast and had roamed the island for over 400 years without interference and had adapted and survived in a harsh environment on limited forage and water supplies.

The National Park Service has recently received a preliminary report entitled the "Genetic Analysis of the Cape Lookout National Seashore Feral Horse Herd" from Dr. Gus Cothran at the University of Kentucky, Department of Veterinary Science. The results of the report are based on 142 blood samples collected during the roundups conducted at Cape Lookout National Seashore in the past 11 months. Dr. Cothran was asked to address the issues of genetic diversity as it relates to possible inbreeding problems and to determine the genetic makeup of the herd. He also made recommendations concerning managing the population size. Dr. Cothran reported that the "genetic variation within the Shackleford Banks herd is near the average for horse populations" and expressed no concern for inbreeding problems at this time. Measures of genetic resem-

blance of the herd showed that the closest resemblance was to the Welsh Pony followed by the Percehron, Posavina, Cheilean Criollo, and Belgian Halfblood breeds. Highest mean similarity to breed groups was with the saddle and light harness breeds and heavy draft breeds. The statistical analysis provided no evidence of ancestry with a particular group of horse breeds. Dr. Cothran indicated some evidence of "Spanish" ancestry based on particular genetic variants found in the herd. One particular variant indicated that the horses have 4 percent "old" Spanish blood. Dr. Cothran summarizes this issue by stating that there is evidence to support the idea that the Cape Look-out horses have Old Spanish ancestry, but it is not possible to quantify this ancestry or to determine how far in the past the herd was established.

A 1993 report by Dr. Cothran showed that there was evidence that all the feral horse populations on the Outer Banks of North Carolina shared a common origin or that there had been exchange and interbreeding of these island horses at some time in the past. He states that this evidence for relationship among the Outer Banks feral horse population has implications for the management of these populations. This relationship of Outer Banks feral populations means that individuals from one population could be introduced into another to maintain genetic variability.

Based on the current information, Dr. Cothran recommends the horse herd be maintained with an adult population size of 65 to 90 horses. When reductions are necessary, removals should focus on very young individuals and older horses that are no longer reproductively fit. He states that the smaller population size could be maintained for a time, but the population should be allowed to expand periodically.

The health of the horse herd is unknown at this time. Veterinarians from the North Carolina Department of Agriculture Veterinary Division, who conducted the recent roundups for the Service, observed that except for the stud horses, which were in reasonably good health, the remaining herd could best be categorized as in fair to poor condition. They noted the herd was generally stunted in growth and had short life spans. This suggests a poor diet and probably a heavy internal and external parasitic load. A young colt that died in February 1997 was necropsied and found to have died from malnutrition although there was fresh grass in its stomach. A heavy parasite load contributed to its condition.

On November 11, 1996, state veterinarians from the North Carolina Department of Agriculture, through a Memorandum of Agreement with the National Park Service, initiated a roundup of the Shackleford horses. The original plan was to round up the island horses, remove them to a stockyard on the mainland, test them for Equine Infectious Anemia (EIA) and euthanize infected horses. The rest of the herd would be retested for EIA after 60

days. If the herd was clean, surplus horses would be offered for adoption and the remainder of the herd returned to Shackleford Banks. Because the issue became controversial, the plan was modified by securing all the blood samples while the horses were corralled on Shackleford Banks rather than moving the horses to the mainland. The Service also agreed to increase the island resident population of horses from the original proposal of 50–60 to between 75–100 horses as an initial level until the genetic diversity of the herd could be established and the carrying capacity of the range studied. The state veterinarians also agreed to consider a quarantine site on the mainland if such a site could be identified in a timely manner.

Based on information developed by an independent researcher, we had anticipated a herd population of 220 to 230 horses, but found only 184. Of this number, 76 horses tested positive for EIA and were removed to the mainland for temporary quarantine. The Foundation had offered to take EIA positive horses and quarantine them for life. The Service had agreed to transfer the horses to the foundation if it could secure a site that met State of North Carolina Veterinary Division requirements. When no site was found, the EIA positive horses were euthanized and disposed of in an approved landfill. The 108 EIA negative horses were released to the island.

Realizing the park would need professional services and public support for a long-term horse management program, in December 1996 the National Park Service established the Shackleford Banks Horse Council as a working committee to assist the park with plans for managing the horses. A wide variety of interests and stakeholders are represented on the council. I will be glad to provide a list of members of the record. The council has met five times and has initiated action on reviewing a number of broad issues regarding the management of the horse herd. In August, the Service advised the council that it would have to withdraw from the committee's work because of a possible conflict of interest with the Federal Advisory Committee Act. The council has decided to continue, even without Service participation.

During the week of March 10, 1997, a second roundup and testing program was conducted on Shackleford horses. The Service rounded up 103 horses. Five horses from the first roundup apparently died over the winter. Of the 103 horses, five horses tested positive for EIA. By this time, the Foundation had secured a state-approved quarantine site and the five EIA positive horses were transferred to it. In the transfer document, the Foundation and the Service committed to develop a long-term Memorandum of Agreement (MOA) to cooperate in the management of the Shackleford Banks horses. On an interim basis, the Service issued a special use permit to the Foundation to allow it to assist with the management of the herd. Since the House hearing on the bill last April, the National Park

Service has been meeting with the Foundation to develop a Memorandum of Agreement for the management of the horses on Shackleford Banks. Several discussions and exchanges of a draft MOA have occurred, but no agreement has been reached to date.

The Service has demonstrated a commitment to maintaining a permanent horse herd at Cape Lookout National Seashore. The Service has demonstrated its commitment to involve the local community, local and State Governments, the private sector, the Foundation, and the professional community, in caring for the long-term needs of these horses. Since the studies that have been completed to date suggest a range within which a viable herd population can be maintained, we believe it is more appropriate to eliminate the requirement for a specific number of horses to be kept at the Seashore. This will allow the Park Service and the Foundation to continue to manage a herd while allowing for the uncertainty of natural processes which might develop. This will enable the Park Service to continue monitoring of the herd, to assess additional scientific information that may be discovered about the herd, and to take into consideration other natural conditions that may affect the viability of the herd population.

Mr. Chairman, that concludes my prepared remarks. I will be glad to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill H.R. 765, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 5 OF THE ACT OF MARCH 10, 1966

AN ACT To provide for the establishment of Cape Lookout National Seashore in the State of North Carolina, and for other purposes

* * * * *

SEC. 5 (a) The Secretary shall administer the Cape Lookout National Seashore for the general purposes of public outdoor recreation, including conservation of natural features contributing to public enjoyment. In the administration of the seashore and the administrative site, the Secretary may utilize such statutory authorities relating to areas administered and supervised by the Secretary through the National Park Service and such statutory authorities otherwise available to him for conservation and management of natural resources as he deems appropriate to carry out the purposes of this Act.

(b)(1) *The Secretary, in accordance with this subsection, shall allow a herd of free roaming horses in Cape Lookout National Seashore (hereinafter referred to as the "Seashore").*

(2) *Within 180 days after enactment of this subsection, the Secretary shall enter into an agreement with the Foundation for Shackleford Horses (a non-profit corporation established under the*

laws of the State of North Carolina), or another qualified non-profit entity, to provide for management of free roaming horses in the seashore. The agreement shall—

(A) provide for cost-effective management of the horses while ensuring that natural resources within the seashore are not adversely impacted; and

(B) allow the authorized entity to adopt any of those horses that the Secretary removes from the seashore.

(3) The Secretary shall not remove, assist in, or permit the removal of any free-roaming horses from Federal lands within the boundaries of the seashore—

(A) unless the entity with whom the Secretary has entered into the agreement under paragraph (2), following notice and a 90-day response period, fails to meet the terms and conditions of the agreement; or

(B) unless the number of free-roaming horses on Federal lands within Cape Lookout National Seashore exceeds 110; or

(C) except in the case of an emergency, or to protect public health and safety.

(4) The Secretary shall annually monitor, assess, and make available to the public findings regarding the population structure and health of the free roaming horses in the national seashore.

(5) Nothing in this subsection shall be construed as creating liability for the United States for any damages caused by the free roaming horses to property located inside or outside the boundaries of the seashore.